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Author(s): Ian Carter

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Respect and the Basis of Equality*

Ian Carter

In what sense are persons equal, such that it is appropriate to treat them as equals? This difficult question has been strangely neglected by political philosophers. A plausible answer can be found by adopting a particular interpretation of the idea of respect. Central to this interpretation is the thought that in order to respect persons we need to treat them as ‘opaque’, paying attention only to their outward features as agents. This proposed basis of equality has important implications for the currency of egalitarian justice, ruling out a number of the *equalizanda* favored by contemporary egalitarians.

Why ought any good ever to be distributed equally among people? Why ought we ever to accord people equal treatment of some sort? Some have answered this question by saying that people ought, at a more fundamental level, to be “treated as equals”—that is, with equal concern and respect. Treating people as equals in this sense may indeed sometimes imply giving them equal amounts of certain material goods. But this answer simply pushes the question a step back. Why ought people to be treated as equals?¹ Is there something about peo-

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1. I shall not here adopt the Dworkinian distinction between “equal treatment” and “treating as equals” (where the latter is taken to mean treating people with “equal concern and respect”; Ronald Dworkin, *Taking Rights Seriously* [London: Duckworth, 1977]). What matters for present purposes is that, in Dworkin’s senses of these terms, “treatment as equals,” no less than “equal treatment,” implies according persons equality of something (even if a nonmaterial good), and this equality (of something) is in need of justification. I shall here use the expression ‘equal treatment’ in a broad sense, to cover all cases in which persons are accorded equality of something. Dworkin himself does not analyze the

ple that makes them equals, such that it is appropriate to accord them equal concern and respect? Is there a property that they possess to an equal degree such that they can be reasonably described as equals?

The search for this property—the property that persons can be said to possess equally—is what characterizes attempts to specify the basis of equality²—the basis for people’s entitlements to equal amounts of something, be it welfare or resources or liberty or political influence or, at a more fundamental level, consideration or moral authority or something else again. To identify the basis of equality is to identify “the features of human beings in virtue of which they are to be treated in accordance with the principles of [egalitarian] justice.”³ With a few notable exceptions,⁴ the task of identifying this property has been strangely neglected by contemporary egalitarians.

The main purpose of this essay is to contribute to the search for the basis of equality. I shall begin by illustrating the importance and difficulty of this endeavor, criticizing some of the answers that have been provided so far in the literature (Secs. I–III). I shall then suggest an answer of my own that both builds on these previous answers and appeals to a particular understanding of the idea of respect for persons (Secs. IV and V). Central to this understanding of respect will be the thought that in order to respect persons we need to treat them as ‘opaque’, paying attention only to their outward features as agents. A secondary aim of this essay is to trace some of the prescriptive implications of this finding in the area of egalitarian distributive justice (Secs. VI and VII). As we shall see, these implications are in tension with a surprising number of egalitarian prescriptions.

The potential reach of my argument needs to be specified at the outset by clarifying the sense in which I shall be using the term “egalitarian.” I shall be using this term in an unusually broad sense inas-

notion of respect at any length. Neither does he say why respect ought to be accorded equally rather than unequally.

2. The expression “the basis of equality” forms the title of sec. 77 of John Rawls’s *A Theory of Justice*, rev. ed. (Cambridge, MA: Harvard University Press, 1999).

3. Rawls, *A Theory of Justice*, 441.

4. Bernard Williams, “The Idea of Equality,” in *Philosophy, Politics and Society*, series II, ed. P. Laslett and W. G. Runciman (Oxford: Blackwell, 1962), 110–31; D. A. Lloyd Thomas, “Equality within the Limits of Reason Alone,” *Mind* 88 (1979): 538–53; Louis Pojman, “On Equal Human Worth: A Critique of Contemporary Egalitarianism,” in *Equality: Selected Readings*, ed. L. P. Pojman and R. Westmoreland (Oxford: Oxford University Press, 1997), 282–99; Richard J. Arneson, “What, If Anything, Renders All Humans Morally Equal?” in *Singer and His Critics*, ed. D. Jamieson (Oxford: Blackwell, 1999), 103–28; Geoffrey Cupit, “The Basis of Equality,” *Philosophy* 75 (2000): 105–25; Jeremy Waldron, *God, Locke, and Equality* (Cambridge: Cambridge University Press, 2002), chap. 3; Jeremy Waldron, “Basic Equality,” New York University School of Law, Public and Legal Theory Research Paper Series, no. 08-61. Lloyd Thomas, Pojman, Arneson, and Waldron are all more or less skeptical or inconclusive.

much as I shall take it to cover all theories that favor according people equal (or less unequal) degrees or amounts of something, even where that something is a nonmaterial good like concern or moral authority. In two other respects, however, I shall use the term “egalitarian” in a more narrow sense than is normally implied by ordinary language. First, in line with much of the contemporary egalitarian literature, I shall assume an egalitarian moral perspective to be deontological, in the sense of according individual persons a pro tanto entitlement to equality of some good, where the grounds of that entitlement are independent of its social consequences in terms, say, of aggregate utility or of social harmony. Second, I shall use the term “egalitarian” to refer exclusively to the prescription of equality (or less inequality) of some good among persons, rather than to the broader class of prescriptions that also includes those of guaranteeing a certain level of sufficiency and of giving priority to the worst off. I shall not comment directly on the bases for, or the implications of, sufficientarianism or prioritarianism, except insofar as those theories are themselves based on a more fundamental commitment to treating persons as equals. In the latter case, prioritarians and sufficientarians count as “egalitarians” at this more fundamental level, and they need to say what it is that qualifies persons to be treated as equals.⁵ If, for example, one follows John Rawls in justifying the difference principle by reference to a hypothetical contract, then one must also explain the assumption of the fundamental moral equality of persons that is essential to the contractualist model of justification.

I. THE NEED FOR A BASIS OF EQUALITY

In ordinary political discourse, the claim that “all humans are equal” is often assumed to be obviously true. This assumption derives in great part from the fact that the claim is often used in a nonliteral way, in order to express the idea that all humans “are entitled to equal treatment” or “are equal in their entitlements.” While this ellipsis is unproblematic in itself, it creates the temptation to slip comfortably into the factual assumption that all humans are, literally, equal in terms of certain characteristics and to repress any lingering suspicion that such a factual assumption might in fact be unjustified. Elizabeth Anderson claims that egalitarianism is based on the “equal moral worth” of persons and that to assert the equal moral worth of persons is to claim

5. “Utilitarianism can dispense with a theory of human equality; the Priority View cannot” (Arneson, “What, If Anything, Renders All Humans Morally Equal?” 117). If Arneson is wrong, and there is a form of prioritarianism that does not depend at any level on treating persons as equals, then that form of prioritarianism lies squarely outside the scope of my essay.

that “everyone equally has the power to develop and exercise moral responsibility, to cooperate with others according to principles of justice, to shape and fulfil a conception of their good.”⁶ Taken literally, the latter claim is certainly false. Is egalitarianism, then, based on a falsehood?

We ought to be exercised by this last question if we endorse the Aristotelian principle that equals are appropriately treated equally whereas unequals are appropriately treated unequally.⁷ Assuming the validity of this formal principle, we must find some morally relevant respect in which persons are equals if we are to justify according them equality of some good, be it moral authority or consideration or respect or some material benefit. There is of course no logical inconsistency involved in simply asserting an entitlement on the part of unequals to equality of some good. One might say, simply, “Even though people are unequal in both their mental and their physical capacities, they are nevertheless each entitled to an equal amount of good *x*.” If, however, the equality of people’s entitlements to *x* is to be justified independently of its social consequences, such an equality of entitlements must be viewed as appropriate in the light of certain characteristics of the bearers of those entitlements. If unequals ought nevertheless to be accorded equal entitlements, why not accord equal entitlements indiscriminately to humans and cats and oysters? Suppose we reject according equal entitlements to humans and cats and oysters in favor of, say, according those equal entitlements only to humans. To justify this restriction, we must show that humans are relevantly different from cats and oysters. That is to say, we must point to a relevant property of humans (say, the capacity for rational choice) that is either not possessed by cats and oysters or is possessed by them to lesser degrees. Once we have acknowledged this requirement, however, we had better acknowledge the further requirement to point to a property that is possessed equally by humans.⁸ Otherwise, the estab-

6. Elizabeth Anderson, “What Is the Point of Equality?” *Ethics* 109 (1999): 287–337, at 312.

7. Thomas Christiano calls this the “generic principle of justice” (see his “A Foundational Basis for Equality,” in *Egalitarianism: New Essays on the Nature and Value of Equality*, ed. N. Holtug and K. Lippert-Rasmussen [Oxford: Clarendon, 2007], 41–82). As Joseph Raz points out, the principle is embraced both by those commonly seen as “egalitarian” and by those commonly seen as “nonegalitarian” (*The Morality of Freedom* [Oxford: Clarendon, 1986], 219). See also Peter Westen, “The Empty Idea of Equality,” *Harvard Law Review* 95 (1982): 537–96.

8. The property possessed unequally by the different species need not be the same property as the one that is possessed equally by moral persons, even where the good to be distributed is the same. The property that is possessed equally might be the property of having at least one of a given set of properties, or it might be a range property (having

ishment of a hierarchy of species entitlements will leave open the possibility of a similar hierarchy of human entitlements.⁹

The requirement to point to a certain equally possessed ‘property’ is not meant to indicate any particular metaethical allegiance—for example, to some form of moral realism. I use the term ‘properties’, here, simply to mean those characteristics that we recognize objects as having when we refer to the ways in which they are alike or differ from one another. This leaves open the metaethical question of how we come to ascribe morally relevant properties to given beings. Regardless of whether the egalitarian is a realist, an antirealist, or a constructivist about properties, her egalitarianism requires her to point to a morally relevant property that she ascribes equally to all the beings covered by her egalitarian theory.¹⁰

Given the deontological and individualist perspective of much of the contemporary egalitarian literature, it is surprising that so little attention has been devoted to the basis of equality. For the most part, the so-called Equality of what? debate¹¹—the debate about whether welfare, resources, capabilities, opportunity for welfare, freedom, or some other good should constitute the currency of egalitarian justice—has been pursued without reference to the possible bases of equality, as if our answer to the normative question “Equality of what?” could be freestanding with respect to the problem of specifying the basis of equality. As Joseph Raz reminds us, “the ground of an entitlement determines its nature.”¹² Yet the debate over what should be equalized seems to have been conducted largely on the assumption that we can reach an adequate answer by appeal to intuitions that directly concern what it is that people ought to get in equal amounts and that the basis of equality (or set of possible bases of equality) can then be automatically derived from that answer. Amartya Sen rightly

at least a minimum of the property possessed unequally by different species). I turn to the latter possibility in Sec. III below.

9. See Peter Singer, *Practical Ethics*, 2nd ed. (Cambridge: Cambridge University Press, 1993), chap. 2; Arneson, “What, If Anything, Renders All Humans Morally Equal?”; Waldron, *God, Locke, and Equality*, chap. 3; Peter Vallentyne, “Of Mice and Men: Equality and Animals,” in Holtug and Lippert-Rasmussen, *Egalitarianism*, 211–37.

10. Compare Waldron, “Basic Equality,” pt. 2.

11. Major points of reference in this debate include the following: Amartya Sen, “Equality of What?” *Tanner Lectures on Human Values* 1 (1980): 197–220; Ronald Dworkin, “What Is Equality? Part 2: Equality of Resources,” *Philosophy and Public Affairs* 10 (1981): 284–345; Richard J. Arneson, “Equality and Equal Opportunity for Welfare,” *Philosophical Studies* 56 (1989): 77–93; G. A. Cohen, “On the Currency of Egalitarian Justice,” *Ethics* 99 (1989): 906–44; Amartya Sen, *Inequality Reexamined* (Oxford: Oxford University Press, 1992); John E. Roemer, *Egalitarian Perspectives* (Cambridge: Cambridge University Press, 1994); Anderson, “What Is the Point of Equality?”; Martha C. Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge, MA: Harvard University Press, 2006).

12. Raz, *The Morality of Freedom*, 223.

points out that the questions (1) “Why equality?” and (2) “Equality of what?” are “distinct but thoroughly interdependent.” He also suggests that once we have answered the second question and provided an adequate justification of our answer, we will already, in effect, have answered the first question.¹³ This would be true if the justification we provided for our answer to the second question included (at least implicitly) the identification of a *basis* of equality of the relevant good—that is, the identification of a property of human beings the equal possession of which qualifies them for equal shares of the relevant good. However, neither Sen nor any of the other major participants in the “Equality of what?” debate provide such a basis for equality.¹⁴ On the contrary, Sen has emphasized that an adequate answer to the question “Equality of what?” must take account of the *differences* between human beings, including differences in natural capacities, as a result of which people who are given the same resources will nevertheless flourish to different degrees.¹⁵

In my view, it is mistaken to answer the question “Equality of what?” in isolation from the basis of equality. It seems to me, on the contrary, both that the basis of equality has implications for the normative question “Equality of what?” and that the limited availability of coherent bases of equality narrows down the set of defensible *equalizanda* to a much greater degree than most egalitarians appear to have assumed.

II. WILLIAMS’S DILEMMA

The difficulty of finding a plausible basis of equality was neatly captured by Bernard Williams in his classic article “The Idea of Equality.” We begin by noting the absence of any physical or mental abilities, “from weight lifting to the calculus,” that persons possess in equal

13. Sen, *Inequality Reexamined*, 12. Sen goes on to suggest that “there is also a more interesting substantive issue here,” which “relates to the fact that every normative theory of social arrangement that has at all stood the test of time seems to demand equality of *something*.” However, pointing to widespread agreement about the correctness of demanding “equality of something” neither solves nor bypasses the fundamental question that I have posed here. If there is no basis for equality, all such normative theories remain unjustified. If there is such a basis, on the other hand, it ought to help us to discriminate among such theories.

14. Rawls counts as an exception, to the extent that he counts as a participant in the “equality of what” debate. See n. 2 above.

15. Sen, *Inequality Reexamined*, 19–21. Capability theorists often refer to the Aristotelian roots of their approach to the assessment of the quality of life. However, Aristotle never prescribed that we try to equalize capabilities. Instead, he prescribed capabilities to function in the ways to which individuals are naturally (and unequally) suited: flutes for the musically endowed, schooling for the academically inclined, greater opportunities for those with greater potential to flourish.

measure.¹⁶ We also note that there is no reason to assume that people have an equal capacity for pleasure or for pain. It might be thought that persons are nevertheless equal in their possession of certain more abstract moral capacities. As Williams points out, however, it is difficult to identify any purely moral capacities: “intelligence, a capacity for sympathetic understanding, and a measure of resoluteness” are all generally agreed to be relevant in determining a person’s moral capacities, and yet these other characteristics are all possessed unequally by different persons.¹⁷

A solution to this problem consists in asserting that a person’s moral capacities—her nature as a moral being and thus her true moral worth—cannot and should not be seen to depend on anything as contingent and unequally distributed as natural capacities. This is the Kantian solution, according to which respect is owed to each person simply in virtue of her being a rational moral agent. For Kant, we are all equally rational and equally moral agents, given that our nature as rational and moral agents depends not on our natural capacities but on the free will that we each possess as a noumenal being. This equality as moral agents gives us a reason for respecting other agents to an equal degree.

The problem with this Kantian solution is that it relies on a conception of the self that we have good reason either to reject or, in any case, to avoid assuming. There is no empirically based reason to suppose that people are equally capable of setting ends rationally or are equally capable of acting for the sake of duty (each of them possessing, somewhere inside them, the same jewel that is equally capable of shining forth) or even that they are equally capable of *trying* to do so.¹⁸ Thus, Williams presents us with a dilemma: either we look to empirical characteristics of human beings, in which case we shall be hard put to find a basis for equality; or we look to the Kantian noumenal self, in which case we may well find a basis for equality, but such a basis will fail to convince anyone who doubts the existence of the noumenal self or who believes, in any case, that concepts like those of moral agency and responsibility must have an empirical basis (if only because a publicly justifiable theory of justice cannot rest on such controversial metaphysical premises). The Kantian basis of respect is “a kind of secular analogue of the Christian conception of the

16. Williams, “The Idea of Equality,” 114–15. See also Rawls, *A Theory of Justice*, 444.

17. Williams, “The Idea of Equality,” 115. See also Arneson, “What, If Anything, Renders All Humans Morally Equal?” 121.

18. A similar objection applies to the overtly religious basis of equality that Jeremy Waldron finds in Locke: the capacity to obey God’s commands. See Waldron, *God, Locke, and Equality*, 79–81.

respect owed to all men as equally children of God. Though secular, it is equally metaphysical: in neither case is it anything empirical *about* men that constitutes the ground of equal respect."¹⁹

Williams's dilemma appears to have been largely ignored by neo-Kantian moral and political philosophers, yet it seems to undermine neo-Kantian claims about persons being owed "equal respect." Neo-Kantians tend to favor a naturalized account of human agency. Such an account might succeed in grounding a form of Kantian respect while nevertheless failing to ground *equality* of that respect.

Thomas E. Hill, for example, admits that Kant's concept of humanity (the property of persons that includes "the ability to reflect on one's desires and circumstances, to set ends for oneself, to form coherent plans") was accompanied by "a radical two-perspective metaphysics that few philosophers today can accept."²⁰ He also holds that we may treat Kant's metaphysics as "inessential to," and "to a considerable extent separable from," the main insights of Kant's moral philosophy.²¹ At the same time, he holds that persons have *equal* moral authority to make and interpret moral requirements: "Everyone is, as it were, an *equal* co-legislator in what Kant calls 'a kingdom of ends.'"²² If we abandon Kant's "radical two-perspective metaphysics," however, it would seem that moral capacities, now conceived as empirical capacities, are possessed unequally by different persons. Why, then, should people not have unequal moral authority? Why should one's degree of moral authority not vary in proportion with one's possession of the empirical capacities in which humanity consists?

In a similar vein, Stephen Darwall claims that "recognition respect" is the fitting response to dignity in another being and that a person has dignity in virtue of the power of rational choice she has as a free agent.²³ This recognition respect is distinct from "appraisal respect," which expresses our judgment of a person's moral character and behavior, her strength of will, her ability to reason, and so on. Appraisal respect for persons is "an attitude that admits of degree," whereas recognition respect for persons must be accorded equally to all, for "there can be no degrees of recognition respect" for persons.²⁴

19. Williams, "The Idea of Equality," 116. See also Lloyd Thomas, "Equality within the Limits of Reason Alone," 539–40.

20. Thomas E. Hill Jr., *Respect, Pluralism, and Justice: Kantian Perspectives* (Oxford: Oxford University Press, 2000), 87.

21. *Ibid.*, respectively, 87, 69.

22. *Ibid.*, 97, my emphasis.

23. Stephen Darwall, "Two Kinds of Respect," *Ethics* 88 (1977): 36–49. See also Darwall, *The Second-Person Standpoint: Morality, Respect, and Accountability* (Cambridge, MA: Harvard University Press, 2006), chap. 6.

24. Darwall, "Two Kinds of Respect," 44–46.

Here too, we may ask *why* recognition respect should be accorded equally to all, if it is the fitting response to dignity, and dignity is possessed in virtue of a variable empirical power of rational choice. Darwall's answer to this problem appears to be that the moral demands we make and acknowledge presuppose equal dignity.²⁵ In addressing or acknowledging a moral claim, he says, one necessarily recognizes a shared moral authority in oneself and in the other. Moreover, this shared authority must be an equal authority, for it consists in exactly the same authority, in the two parties, to recognize the same demand as valid and to blame the addressee should she fail to satisfy the demand. Moral authority is second-personal authority, and second-personal authority is necessarily equal authority.

If, however, we have the empirical knowledge that people do *not* have equal dignity—that is, that people are not *equally* free and rational beings—should the force of the above presupposition not be to tell us that there is something wrong with the moral demands we make and acknowledge, rather than to tell us that we should assume people to have equal dignity?

Skepticism about the transcendental deduction of equal dignity need not imply a more general skepticism about transcendental arguments as such. Consider P. F. Strawson's influential argument to the effect that, since human dignity is presupposed by the "reactive attitudes" that are essential to moral practices, and we cannot conceive of human practices without moral practices, we had better recognize human dignity (an argument to which I shall refer again later on).²⁶ We can accept this argument without admitting that we had better recognize *equal* human dignity, for there remains the alternative option of assigning different rights and duties to different people in accordance with their different agential capacities. If we adopt this alternative option, we shall share moral authority equally with our equals and unequally with our inferiors or superiors. We shall be less morally demanding of our inferiors than we are of our equals. We shall address fewer second-personal claims to them, acknowledge fewer second-personal claims made by them, and resort more often to various forms of social power in determining their wills. Human society has been organized for millennia on the assumption that persons are unequal in their basic moral capacities. (Whether or not it has been organized justly according to that assumption, by assigning greater rights and privileges only to those with the greater moral capacities, is another matter.)

25. Darwall, *The Second-Person Standpoint*, chap. 10.

26. P. F. Strawson, "Freedom and Resentment," in *Freedom and Resentment and Other Essays* (London: Methuen, 1974), 1–25.

Despite the difficulties raised by Williams's dilemma, we continue to be tempted by the idea that persons are equally owed some kind of respect. More specifically, the attractive if elusive prospect of an alternative empirical basis for equality of recognition respect continues to suggest itself as a candidate for the basis of equality. This last thought informs the basis of equality that I shall put forward later on, and it also informs Williams's own proposed solution to his dilemma. A brief examination of Williams's proposal will therefore prove useful for comparative purposes.

Williams's own suggested basis of equality consists in a kind of self-awareness that is possessed by all human agents: the consciousness people have of their place in the world, of their own activities, and of their own intentions and purposes.²⁷ This empirical characteristic of persons, which Williams sees as grounding equality "from the human point of view," has the merit of prescinding from peoples' differential achievements, whether actual, probable, or even merely potential. We need to set aside our evaluations of a person's achievements, place ourselves in her shoes, and see the world from her point of view as an agent. According to Williams, adopting others' points of view in this way constitutes a form of respect—a way of treating persons as "ends in themselves."

The property identified by Williams—consciousness of one's own place in the world and of one's own activities, intentions, and purposes—may indeed constitute a plausible basis of respect of a certain kind, but there are reasons for doubting that it will constitute a basis for *equal* respect (of that kind). While it does prescind from certain kinds of (unequally possessed) human capacities (that is, capacities to achieve certain goals), the property identified by Williams is nevertheless itself a capacity, albeit a more abstract and fundamental capacity. And, as an empirical capacity, it appears, like the other empirical capacities mentioned so far, to be possessed in different degrees by different individuals. People are more or less conscious, and more or less able to be conscious, of their own activities, of their own future, of their own life plan, of the world around them and the options it makes available to them. If we attempt to view the world through the eyes of other people, we shall see that those other people are unequal in the above respects. Indeed, Williams himself admits that a person's level of consciousness of her place in the world can vary as a result of oppression, exploitation, and degradation and apparently recognizes that this creates a problem for his proposed basis of equality. Oppressive political regimes often survive precisely because they successfully stifle or suppress people's consciousness of their own disad-

27. Williams, "The Idea of Equality," 117.

vantaged positions in the world by restricting their horizons and their awareness of their limited opportunities. Because he recognizes the unequal levels of consciousness produced by different political and social contexts, Williams therefore suggests that the Kantian maxim (to treat persons as ends in themselves) must imply not only that “one should respect and try to understand another man’s consciousness of his own activities” but also that “one may not suppress or destroy that consciousness.”²⁸

Does Williams’s interpretation of the Kantian maxim save the notion of “consciousness of one’s place in the world” as a basis of equality? If we think so, this must be because we believe nature to have provided us all equally with such consciousness, so that the only possible sources of departures from the default position of “equality of consciousness” are human interventions in the form of oppression, exploitation, and degradation (sources that humans are capable of avoiding, in the name of the Kantian maxim). But once we admit the existence of human causes of such variations in degrees of consciousness, there seems to be no good reason for denying that such variations might also have natural causes. If degrees of consciousness can vary, why should they not sometimes vary through natural causes? Claiming that nature necessarily places us in a default position of equality (of consciousness) seems tantamount to making an a priori claim about equal human capacities—exactly the sort of claim that Williams, in grasping the empirical horn of his dilemma, wishes to avoid.

III. A RANGE PROPERTY

In seeking to overcome the problems encountered so far, we might point to a minimum threshold of empirical capacities. More technically, the basis of equality might be said to consist in a range property.

A *range property* is a binary property: it is either possessed or not possessed. To possess a range property is to possess some other, scalar property, within a specified range. Thus, it might be said that the basis of equality is humanity and that one possesses humanity in virtue of one’s possession of some more fundamental scalar property—say, rationality—at or above a given level. Being a range property, humanity would then be possessed equally by all those who do possess it. There would continue to be interpersonal variations in (what we might call) *the basis of the basis* of equality (in this case, rationality). However, we would pay no attention to variations in the basis of the

28. *Ibid.*, 118.

basis of equality as long as such variations occur above the established minimum threshold.

A solution of this form is proposed by John Rawls. In Rawls's view, the basis of equality is the binary property of being a moral person, where a moral person is a being that has a capacity for a conception of the good and a capacity for a sense of justice. And while "individuals presumably have varying capacities for a sense of justice," only "a certain minimum" need be met for an individual to be a moral person and therefore to be entitled to equal treatment (in the form of basic rights).²⁹

I believe that the Rawlsian solution of a range property points us in the right direction in our search for the basis of equality. Rawls's range property is certainly an empirical property and is certainly possessed equally by all those who do possess it. However, the mere ascription of a range property is not itself sufficient to provide us with a satisfactory basis of equality. In particular, the Rawlsian solution runs up against two problems.³⁰

The first problem is that of showing why the range property is morally relevant. The range property is ascribed to individuals *in virtue of those capacities on which it supervenes* (the putative "bases of the basis of equality"), and we know that these capacities vary from one person to another. As a result, we are not yet able to say what is so special about the range property itself, as opposed to its basis. If the basis of a range property is more fundamental than the range property itself, why not concentrate directly on the more fundamental scalar property (or set of properties)? For what reason should we concentrate on the less fundamental, supervening property? Why not say that moral personality varies in degree in accordance with variations

29. Rawls, *A Theory of Justice*, 443. On the same page, Rawls misleadingly gives the impression that the basis of equality is relevant only to the justification of his first principle of justice. In fact (as I mentioned in the introduction to this essay), the basis of equality is necessary in grounding the whole contractualist model which in turn serves, at least in part, to justify both of his principles of justice (on this point, see also the penultimate and antepenultimate paragraphs of Sec. VII below).

30. I leave aside here the problem of establishing the level of the threshold. Some critics of Rawls have objected that no particular threshold can have "the kind of fundamental significance associated with our supposed equality" (Cupit, "The Basis of Equality," 110), but this is not a fatal problem for Rawls's account. The objection points to the inevitable vagueness of any threshold that can qualify as so fundamentally significant, but, as Rawls himself points out, "one must not confuse the vagueness of [the range of application of] a conception of justice with the thesis that basic rights should vary with natural capacity" (*A Theory of Justice*, 445). Others have pointed out that the threshold will inevitably exclude certain human beings from the sphere of egalitarian concern. However, this fact does not rule out showing concern toward such human beings for nonegalitarian reasons.

in the scalar property (or properties)? If one wishes to construct a theory of egalitarian justice, rather than merely to state one's allegiance to it, one needs to provide some independent moral reason for focusing on the range property, that is, a reason that is independent of one's commitment to equal entitlements. Unfortunately, no such independent reason is explicitly put forward by Rawls himself.

The second problem confronting the Rawlsian solution is that, even if we can justify the moral relevance of the range property when assigning certain goods to people, there might still be no good reason for considering the subvenient scalar properties to be irrelevant when assigning those same goods. It might indeed be suggested that the relevant comparative assessment of persons ought to be an overall assessment—one that takes into account all of the morally relevant properties of persons, including the scalar properties such as intelligence, sensitivity, strength of will, and so on, on which moral personality supervenes. In this case, the comparison of persons as equal in just one morally relevant respect (that is, in terms of the range property) would be combined with, and probably overwhelmed by, all the other morally relevant comparisons according to which they are unequal. On an overall assessment, people would then still turn out to be unequal.³¹ If the supervenient property is morally relevant to the distributive problem at hand, and if the supervenient property depends for its existence on the subvenient properties, how can those subvenient properties be irrelevant? Is there any reason why the moral relevance of the range property should itself rule out as irrelevant the scalar properties on which it supervenes?

IV. RESPECT AND OPACITY

Rawls's proposal represents a necessary step in the search for the basis of equality. To complete that search, we need to find an independent reason for assessing persons in terms of the range property rather than in terms of the basis of that range property, and we need to show why the range property taken on its own is a more appropriate basis of evaluation than a combination of the range property and its basis.

In what follows I shall suggest that a solution to these two problems can be found in a particular moral justification for *evaluative abstinence*—that is, a refusal to evaluate persons' varying capacities. As I shall try to show, the justification for such a refusal can be said to derive from a particular sense of respect for human dignity. In this

31. This point is a specific application of a more general point made in Cupit, "The Basis of Equality," 112.

section I shall set out the intuitive idea behind this solution, explaining how the appeal to such a sense of respect would allow us to overcome the problems encountered so far in attempting to find a basis for equality. My aim in this section is a limited one: it is simply to show how the solution would work, on the assumption that the relevant sense of respect has some independent moral plausibility. In the next section I shall argue, more substantively, that this sense of respect does indeed have some independent moral plausibility—in particular, within the context of a political conception of justice—and is therefore worth taking seriously as a solution.

Williams, we have seen, recognizes that respect for persons must involve the exclusion of certain kinds of evaluation. However, the interpretation of respect that is needed in order to establish the moral relevance of the Rawlsian range property differs from that proposed by Williams, both in terms of the nature of the excluded evaluations and in terms of the way in which they are excluded. For Williams, respecting a person involves putting oneself sympathetically in her shoes, looking inside that person and then looking out at the world from her point of view. We have seen that this strategy cannot rule out taking into account persons' variable empirical capacities: it rules out consideration of some variable capacities (notably, the capacity to achieve certain goals), but only by focusing on other, more abstract, variable capacities (the capacity to perceive and understand one's place in the world). Such a strategy gives us a reason for respecting persons in a certain sense, but not for respecting them equally.

I suggest adopting the opposite perspective: we need to *avoid* looking inside people. The kind of respect I have in mind involves—with an important qualification to be mentioned immediately below—adopting a perspective that remains external to the person, and in this sense holding back from evaluating *any* of the variable capacities on which her moral personality supervenes, be they capacities for rational thought or capacities for evaluative judgment or capacities for awareness and understanding of one's place in the world.

Respect, on this alternative interpretation, is a substantive moral attitude that involves abstaining from looking behind the exteriors people present to us as moral agents. More precisely, while we may see behind these exteriors (for to do so is often unavoidable), if and when we do perceive people's varying agential capacities we refuse to let such perceptions count as among the reasons motivating our treatment of those people. In other words, we avoid evaluating people's agential capacities as an aid to deliberation about alternative courses of action. In desisting from such evaluations, we take the subject as given and ask no questions about his or her capacity to pursue the good or to understand the nature of the moral or aesthetic good life

or to understand his or her place in the world. This account of respect has at least as good a claim as that of Williams to qualify as an intuitively plausible interpretation of the idea of treating persons as ends in themselves. Indeed, the idea that respect involves adopting a perspective external to the agent is supported by Kant's claim that respect, in contrast to love, involves maintaining "a proper *distance*."³² It is also supported by the intuition that respecting others involves turning a blind eye to certain of their features. Even between friends, Kant says, "we must be *blind* to the other's faults, for otherwise he sees that we have lost respect for him, and then he also loses respect for us."³³

Adopting a perspective that is "external" to the agent means adopting a perspective that avoids evaluation of the agential capacities on which moral personality supervenes. Exactly what counts as external and what as internal will therefore depend on the particular conception of moral personality that we employ. I shall not specify a particular conception of moral personality here but simply assume that moral personality supervenes on a number of agential capacities, such as "the ability to reflect on one's desires and circumstances, to set ends for oneself, to form coherent plans."³⁴ The internal can be defined, in the present context, as that on which the property of moral personality supervenes. Therefore, the metaphor of "looking inside" someone refers to the practice of evaluating the properties on which moral personality supervenes. Evaluating other properties, such as height, does not count as "looking inside" persons, because height is not—we may suppose—one of the properties on which moral personality supervenes.

Let us say that to respect persons in the above way is to treat them as opaque. More precisely, it is to treat them as opaque up to a point, on the scale or scales measuring their agential capacities. Treating persons as wholly opaque, in the sense of completely ignoring their agential capacities, would be too strong, for it would preclude those assessments that are necessary in order to have the reasonable belief that they have any agential capacities at all. We perceive individuals as moral agents because we perceive them as having at least a certain minimum of agential capacities. Looking inside an individual (in order to establish whether the minimum standard is met) is therefore a precondition for considering it appropriate to treat that

32. Immanuel Kant, *The Metaphysics of Morals*, ed. M. Gregor (Cambridge: Cambridge University Press, 1996), 215, my emphasis.

33. Immanuel Kant, *Lectures on Ethics*, ed. P. Heath and J. B. Schneewind (Cambridge: Cambridge University Press, 1997), 207, my emphasis.

34. See n. 20 above.

individual as opaque. These two perspectives—the internal and the external—are not contradictory, however, for they concern different portions of the scale along which agential capacities are measured: the notion of respect does plausibly involve a blindness to the degree to which an individual possesses these capacities above a certain absolute threshold; at the same time, that same notion of respect can permit us to adopt the internal perspective either where agential capacities are recognized to be below the threshold or where that perspective is necessary in order to ascertain that the minimum standard is met (although we tend in most cases to consider it correct to ascertain the meeting of that standard in a perfunctory and nonintrusive way, on the basis of an individual's outward behavior, and to give the benefit of the doubt in borderline cases). Once the absolute minimum is recognized, opacity kicks in. And once opacity has kicked in, there can be no grounds for locating individuals along the scale of variable agential capacities (above the threshold) or for dividing them into classes by positing other thresholds further up the scale. Bearing in mind this qualification about the range of applicability of opacity, let us call this kind of respectful attitude 'opacity respect'.

The notion of opacity respect helps to explain why we are inclined to ascribe to individuals the property of moral personality in the form of a range property: respect for persons consists not simply in the recognition of (variable) empirical agential capacities in certain beings, but in (i) the recognition of their possession of an absolute minimum of those empirical capacities plus (ii) the adoption of the external perspective that is appropriate in the case of any being that is seen as having at least that minimum. The Rawlsian range property of moral personality is, then, a feature of such beings which we must see them as possessing if we are disposed to respect them in the above-described way.

The notion of opacity respect therefore allows us to overcome the first of the two problems we identified in Rawls's proposed basis of equality. If we can show that opacity respect is an independent moral requirement, and not one that itself derives from a commitment to equality of certain entitlements, then we shall have supplied an independent reason for seeing the Rawlsian range property as a morally relevant empirical property of persons. The range property will be a genuine basis of equality rather than the question-begging solution it originally appeared to be.

Moreover, given the nature of this solution to the first of the two problems we encountered in justifying the Rawlsian range property, we will also be in a position to solve the second. To the extent that opacity respect is indeed the appropriate attitude to show to beings who meet a certain absolute standard of moral agency, the adoption

of that attitude will necessarily exclude the possibility of making overall assessments of persons by combining the range property with the scalar properties on which it supervenes. If the reason for the moral relevance of the range property is exactly the appropriateness of the attitude of opacity respect, then our focus on the range property will itself rule out assessments of persons in terms of those subvening properties, and hence the combinability of those subvening properties with the range property.

My suggestion, then, is that equality of certain entitlements is justified because those entitlements should be assigned on the basis of personhood, and while the agential capacities on which the ascription of personhood is based are themselves ultimately scalar properties (as they must be, on any naturalized account of the basis of Kantian respect), it is appropriate to treat personhood as a range property because it is appropriate to show opacity respect toward beings that meet a certain absolute standard of moral agency.

V. WHY OPACITY RESPECT?

Having illustrated the way in which opacity respect can ground the Rawlsian range property as a basis of equality, I now attempt a more substantive defense of the attitude of opacity respect itself. In what follows I argue that opacity respect is an independent, plausible moral requirement (in other words, that it has a certain plausibility which is not itself based on a prior commitment to equality) and that there is at least one kind of context—that of a politically liberal conception of justice—in which opacity respect is not only an appropriate attitude but also one that has enough weight, in action-guiding terms, to entail a significant moral commitment to treating persons as equals. I do not attempt to parry all possible objections to the idea of opacity respect; I attempt only to describe the place of that idea in one intuitively plausible political conception of justice, thereby showing that the idea deserves to be taken seriously as a solution to the problem of the basis of equality. I begin by taking a closer look at what is commonly thought of as the appropriate object of respect: human dignity.

According to Kantians, we possess dignity in virtue of our agential capacities. Dignity in the Kantian sense is something that persons possess as such and therefore regardless of how they are treated by others: treating a person with pity or contempt or ridicule does not remove her dignity in this Kantian sense, for even in the face of such treatment she continues to be a moral agent and therefore to be worthy of respect. (Dignity can be destroyed only by destroying personhood itself.) The appropriateness of respect as a response to this

kind of human dignity survives the passage from the “two-perspective metaphysical” account of dignity to the “naturalized” account apparently preferred by many neo-Kantians, even if such respect might no longer involve a quasi-religious “reverence.” As we saw earlier, the problem in the present context is not to show why we should respect beings that possess agential capacities but to show why we should respect them equally.

I now wish to supplement the naturalized Kantian account of dignity with another nonmetaphysical sense of dignity that is closer to ordinary language: dignity as a feature of a person’s character, behavior, or situation. Following Aurel Kolnai, we can say that dignity in this second sense depends on a person’s possession of an array of qualities that include those of “composure, calmness, restraint, [and] reserve,” along with (among others) those of “*distinctness, delimitation, distance*; of something that conveys the idea of being intangible, invulnerable, inaccessible to destructive or corruptive or subversive interference.”³⁵ Unlike in the case of dignity in the first sense, a person can easily lose her dignity in this second sense, and not only through her own choices and actions but also through those of others. For example, a person loses her dignity (or at least a part of it) in this second sense when she is placed in a concentration camp, or when she is reduced (for whatever reason) to begging for her sustenance, or when she is stripped naked.³⁶ Let us call this second kind of dignity ‘outward dignity’ and the first kind ‘dignity as agential capacity’.

Part of what is covered by the concept of outward dignity (a person’s “composure, calmness, restraint,” and so on) forms the basis of a certain kind of appraisal respect in Darwall’s sense of the term (“I respect you for having reacted with such dignity”). However, outward dignity can also be understood as a feature of a person that is incompatible with certain kinds of appraisal by others. Thus, often when a person loses outward dignity the reason is that she is inappropriately *exposed*, where the exposure in question is to evaluations of certain of her features by certain people in certain situations—features that would not normally be, or ought not normally to be, evaluated by those people in those situations. Edmund Burke had in mind outward dignity when he described the French Revolution as having torn off “all the decent drapery of life”—“all the superadded ideas, furnished from the wardrobe of a moral imagination, which the heart owns, and the understanding ratifies, as necessary to cover the defects of our naked, shivering nature, and to raise it to dignity in our own esti-

35. Aurel Kolnai, “Dignity,” *Philosophy* 51 (1976): 251–71, at 253–54, my emphasis.

36. *Ibid.*, 258–59.

mation.”³⁷ The exact way in which this second aspect of outward dignity is realized in practice depends on social norms, but that realization universally includes, I suggest, a degree of concealment. As Thomas Nagel has convincingly argued, concealment is indeed a basic human need.³⁸ In the case of the human body, outward dignity involves a literal covering up with clothing or veils or paint; in the case of persons considered as bundles of agential capacities, it involves the maintenance of what Kolnai calls a certain “distance,” of a certain “intangibility” and “inaccessibility”—features that imply the kind of metaphorical opacity of the agent that I referred to earlier.

Where outward dignity is understood as a feature of a person that we are required to maintain or restore, it makes sense to talk of respect for outward dignity. Opacity respect—understood as the adoption of a perspective that is external to a human agent—is respect for a kind of outward dignity: the kind of outward dignity that pertains to a person’s agential capacities.

When is opacity respect an appropriate attitude? I suggest that we have reason to adopt the attitude of opacity respect toward a particular being when two (jointly necessary) conditions obtain: first, that being possesses *dignity as agential capacity* (which is to say, it possesses at least a certain absolute minimum of the relevant empirical capacities); second, we stand in a certain relation to that being such that it is appropriate for us to view that being *simply as an agent*. The basic idea is that when an agent is laid bare—when it is considered as an agent and no more than an agent—our respect for that agent depends on our clothing it with outward dignity as an agent—that is, on our adopting an external point of view, taking the agent as given and refraining from “looking inside” it in the sense specified earlier. I shall try to substantiate this last point shortly. First, it is worth considering in which kinds of relations it is appropriate to view an agent simply as an agent.

Different moral attitudes are appropriate in virtue of the different social roles persons occupy and the ways in which those roles are related. In “thick” human relations, opacity respect will often be an inappropriate attitude. This fact need not worry us, for inequality is indeed an appropriate feature of much of social life. What matters is that opacity respect be appropriate in certain significant spheres of life. Consider, then, relations that take place in the public sphere. Here, we are often required to view other people simply as agents,

37. Edmund Burke, *Reflections on the Revolution in France* (Harmondsworth: Penguin, 1969), 171.

38. Thomas Nagel, “Concealment and Exposure,” in *Concealment and Exposure and Other Essays* (Oxford: Oxford University Press, 2002), 3–26.

and the attitude of opacity respect is often appropriate. For example, I might relate to the same person both as her professor and as a fellow citizen. Given these dual roles, I can, without contradiction, assess that person's intellectual capacities insofar as I relate to her as a professor while also rejecting the relevance of any such assessments insofar as I relate to her as a citizen. Respect for that person as a citizen might also oblige me to refrain from rendering public my professorial assessment of her intellectual capacities and to limit myself to the public communication of my assessment of her level of performance as a student. Similarly, medics and psychologists assess our internal capacities but are normally obliged to refrain from rendering those assessments public. We tend to view public assessments of people's internal capacities as particularly inappropriate where the source of those assessments is scientific or otherwise authoritative.

I shall not examine all of the kinds of public relation that require the adoption of opacity respect but shall confine my attention here to one particularly important kind: that between political institutions and the citizen. Political liberals tend to hold that it is appropriate for political institutions to view the citizen simply as an agent. They might not hold this to be the appropriate view for political institutions to take of the citizen in *all* of her public roles (for example, applicants for a position in the civil service might be set a public exam that includes something like an intelligence test). Nevertheless, they do hold it to be the appropriate view where the citizen relates to the political institutions in her role as a bearer of a set of basic political entitlements and the political institutions relate to her in their role as guarantor of that set of basic entitlements. What is more, political liberals tend also to hold that political institutions, in their role as guarantors of basic political entitlements, should respect citizens' outward dignity. They feel that it is no business of the state, in its role as guarantor of basic rights, to evaluate the degrees to which individuals are able to make rational and responsible decisions, to form reasonable value commitments, to develop worthwhile life plans, and so on, for in so doing the state would show disrespect toward those individuals. Hence Elisabeth Anderson's complaint against luck egalitarians—a complaint to which I shall return later—that they encourage disrespectful evaluations in exactly this way: "How dare the state pass judgement on its citizens' worth as workers and lovers!"³⁹

These two ideas—first, that political institutions should guarantee basic entitlements to citizens considered simply as agents and, second, that those institutions should hold back from evaluating citizens' agential capacities—are endorsed in conjunction by political liberals,

39. Anderson, "What Is the Point of Equality?" 305.

and this conjunction can be seen as grounding the equality of persons considered as bearers of basic political entitlements. Thus, the special relevance of opacity respect to the public sphere helps us to make sense of the Rawlsian notion of “citizens as free and equal.” Rawls bases this notion on “a political conception of the person” and simply asserts that there is such a political conception in our public culture. The appropriateness of opacity respect can be seen as supplying a *reason* for affirming that political conception of the person.

Now it might be objected that one’s commitment to the outward dignity of agents comes after one’s commitment to the equality of agents—that the commitment to evaluative abstinence in the public sphere is really nothing more than the outcome of a desire to avoid concluding that people are unequal as agents and that they ought therefore to have unequal basic entitlements. To answer this objection we need to return to the prior question of why we should be committed to the outward dignity of agents considered simply as agents.

It seems to me that the liberal commitment to the outward dignity of agents is premised not on the idea of equality of agents but on that of respect for agency itself. The idea of outward dignity can indeed be seen as providing the missing link between the Strawsonian argument from reactive attitudes (cited earlier) and the idea that we should respect agents *equally*. The outward dignity of an agent, as realized through opacity respect, protects that agent from exposure to empirical assessments of the very capacities in which that agent consists. If we grasp the empirical horn of Williams’s dilemma, we had better endorse this form of protection, for to the extent that we fail to do so we permit agency to be dismantled and, ultimately, “explained away.” Thus, political liberals eschew the “problematization of the subject,” for “the critique of the ‘subject’ is too often at the service of the wish, in Burke’s remarkable phrase . . . , to ‘subtilize us into savages.’”⁴⁰ The ethical commitment not to expose agents to such indignities is illustrated by the high value that political liberals place on liberty in the negative sense of the term. Negative liberty is normally thought of as the absence of constraints that originate “outside” the agent. Positive conceptions of liberty, by contrast, take into account constraints that have their origin “inside” the agent—constraints like weakness of the will, the endorsement of distorted or illusory value perspectives, or the propensity to make choices that are irrational and/or influenced by various alien forces. As a result of their focus on the external conditions of freedom, liberals are often accused of short sightedness, of being “blind” to those less obvious

40. George Kateb, *The Inner Ocean* (Ithaca, NY: Cornell University Press, 1992), 237; Burke, *Reflections on the Revolution in France*, 181.

internal constraints on freedom that are visible only to the more penetrating eyes of the advocate of positive liberty.⁴¹ But the blindness is deliberate, the lack of penetration a conscious theoretical stance.⁴² A government's respect for citizens' outward dignity might be compatible with its acting to provide an environment that will generally foster positive freedom (I shall return to this point in the next two sections). That respect is not similarly compatible, however, with a concern to identify internal constraints within particular agents, for such a concern would involve treating particular agents as patients, as "objects in need of repair,"⁴³ adopting—at least to some degree—what Strawson called an "objective" attitude, according to which other human beings are things to be "managed or handled or cured or trained" rather than respecting them by adopting a "participatory" or "reactive" attitude.⁴⁴

No appeal need be made to the equality of persons, or to the equality of their basic entitlements, in explicating this particular interpretation of the ideal of respect for persons. Rather, equality is best thought of as entailed by that ideal. If I introspect as a political liberal in the light of the above considerations, I find that my commitment to taking the agent as given (my aversion to "problematizing the subject") is respect-based rather than equality-based; I find, indeed, that my commitment to opacity respect in the context of a political conception of justice allows me to account for my otherwise groundless belief, within that same context, that all persons are equal. I therefore conclude that it is perfectly plausible to see the commitment to outward dignity as independent of, and indeed as grounding, the commitment to treating persons as equals.

The argument leading to my proposed basis of equality can now be summarized as follows: the only empirical property that is possessed equally is a range property; we have reason to consider this range property morally relevant (and to rule out its combinability with the scalar properties on which it supervenes) if we have reason to treat persons as opaque (in the sense specified in the previous section); we have reason to treat persons as opaque if we have reason to respect not only their dignity as agential capacity but also their outward dignity as agents; we have reason to respect their outward dignity

41. Such is the view expressed by Charles Taylor in "What's Wrong with Negative Liberty," in *The Idea of Freedom*, ed. A. Ryan (Oxford: Oxford University Press, 1979), 175–93. I have criticized Taylor's conception of freedom in *A Measure of Freedom* (Oxford: Oxford University Press, 1999), chap. 6.

42. This theoretical stance surely motivates much of Isaiah Berlin's critique of positive conceptions of liberty and of their illiberal political uses. See Isaiah Berlin, *Liberty* (Oxford: Oxford University Press, 2002).

43. Kateb, *The Inner Ocean*, 88, 230.

44. Strawson, "Freedom and Resentment," 9.

as agents in the context of relations in which it is appropriate to view them simply as agents; and, finally, there is at least one relation in which the appropriateness of viewing agents simply as agents is sufficiently weighty, in action-guiding terms, to ground equality as a significant moral ideal—that is, the relation between political institutions (in their role as guarantors of basic political entitlements) and citizens (considered as bearers of those entitlements).⁴⁵

VI. HOW THE BASIS OF EQUALITY CONSTRAINS THE CURRENCY OF EGALITARIAN JUSTICE

If the foregoing argument is worth taking seriously, then so too are its implications for the debate over the currency of egalitarian justice. I believe that the argument *is* worth taking seriously, for it is difficult to find any alternative resources in deontological moral theory that would justify the irrelevance of variations in the scalar properties upon which the range property of moral personality supervenes. In what follows, then, I shall simply assume that the source of our commitment to treating persons as equals is indeed the Rawlsian range property motivated by opacity respect.

It might be claimed that one can argue from my proposed basis of equality to a specific currency of egalitarian justice. I shall not assess that rather ambitious claim here.⁴⁶ Instead, I shall limit my attention to the ways in which our answer to the question “Equality of what?” is *constrained* by a commitment to opacity respect, assuming opacity respect to play a necessary role in establishing the basis of equality.

In order to understand how, exactly, the commitment to opacity respect constrains our answer to the question “Equality of what?” it is necessary to distinguish between egalitarian principles and egalitarian practices. Call an *egalitarian principle* any principle that takes the form ‘equality (or less inequality) of x ’. Call an *egalitarian practice* any at-

45. If the relation between the state and the citizen is the only one in which the requirement of opacity respect is sufficiently weighty and general in scope to provide a basis for equality, then my suggested basis of equality can be expected to have important implications not only for the currency of egalitarian justice (as argued in the next two sections), but also for its site and its scope. I have begun to address its implications for the site of egalitarian justice in a paper entitled “Equality: Its Basis and Its Site.”

46. I have examined the distributive implications of equal respect within the context of a left-libertarian theory of rights, in “Respect for Persons and the Interest in Freedom,” in *Hillel Steiner and the Anatomy of Justice*, ed. S. A. de Wijze, M. H. Kramer, and I. Carter (New York: Routledge, 2009), 167–84.

tempt to act on an egalitarian principle.⁴⁷ For any one egalitarian principle there might be a number of possible corresponding egalitarian practices. The commitment to opacity respect does not rule out any egalitarian principles in a logical sense, considered in isolation from egalitarian practices. However, it does affect the plausibility of certain egalitarian principles indirectly, via its implications for the justifiability of given egalitarian practices.

Consider, first, egalitarian practices. In order to have a justificatory basis, a particular practice of equalization (or reduction of inequality) must pass what I shall call the ‘opacity test’.

The opacity test: a practice passes the opacity test if and only if the carrying out of that practice neither constitutes nor presupposes any violation of the requirement of opacity respect.

In other words, in order to be justifiable, a practice that aims to equalize (or reduce inequality of) a given good must not itself include or presuppose evaluations of the scalar properties upon which the range property of moral personality is held to supervene. To prescribe conduct that includes or presupposes such evaluations is to deny that one is morally constrained by the requirement of opacity respect and is therefore to deny the reason we have adduced for identifying the range property of moral personality as the basis of equality. The pursuit of equality (or lesser inequality) of the relevant good will then no longer have a basis.

Ruling out certain egalitarian practices affects the plausibility of certain egalitarian principles. Our choice of egalitarian principle—at least where such a principle amounts to what G. A. Cohen would call a “rule of regulation”⁴⁸—ought to be affected by the question of which corresponding egalitarian practices are actually consistent with that principle. In other words, the plausibility of the principle ‘equality of x ’ ought to depend in part on whether and, if so, in what ways, it is actually possible to equalize x (or to reduce inequality of x) consistently with our moral reasons for endorsing that equality (or that reduced inequality). An egalitarian principle will lack a justificatory basis if, as a matter of contingent fact, there is no way of acting on it that passes the opacity test. Where only some of the ways of acting on the principle pass the opacity test, the principle will be more or less

47. Note that prioritarianism does not count as egalitarian on these definitions, either at the level of principles or at the level of practices, even if prioritarianism has the effect of producing a lesser inequality.

48. Cohen calls a “rule of regulation” a principle of justice that is fact-dependent. According to Cohen, but not according to Rawls, fundamental principles of justice are fact-independent. G. A. Cohen, *Rescuing Justice and Equality* (Cambridge, MA: Harvard University Press, 2008).

plausible, depending both on the efficacy of those ways of acting on it and on their implications for other values. In the remainder of this article, I shall confine my attention to egalitarian practices.

In order to understand which egalitarian practices pass the opacity test, it will be useful to make a further distinction between what I shall call the direct pursuit of equality (or lesser inequality) and its indirect pursuit. By a *direct* pursuit of equality (or lesser inequality) I mean the practice of pursuing equality (or lesser inequality) of x by first assessing how much x is possessed by each person and then taking steps to correct any inequalities revealed by that assessment. By an *indirect* pursuit of equality I mean a practice that aims to make the distribution of x equal (or, more realistically, less unequal) without assessing the degrees to which individuals possess x itself, but focusing instead on certain other goods the distribution of which is in some way empirically correlated to the distribution of x .

The direct pursuit of equality passes the opacity test for some *equalizanda* but not for others. In particular, it passes the test for *equalizanda* that do not qualify as internal to the range property of moral personality, given a particular specification of that range property.

The practice of directly equalizing opacity respect itself passes the opacity test, of course, as does the practice of equalizing some good that is owed to persons in virtue of (and in proportion to) their being owed opacity respect. One good that is arguably owed to persons in virtue of their being owed opacity respect is what Kant called “external freedom,” or what I earlier referred to as negative freedom.⁴⁹ But I shall not elaborate on the justificatory link between opacity respect and the provision of other goods, given that my concern here is with the ways in which opacity respect constrains the currency of egalitarian justice, rather than with the hypothesis that it can directly determine that currency. There are many goods that are not necessarily owed to persons in virtue of their being owed opacity respect, the direct equalization of which nevertheless passes the opacity test. One such good might be welfare, interpreted hedonistically: if pleasure and pain are not themselves among the properties upon which moral personality supervenes, then an egalitarian practice that aims for equal hedonistic welfare might still pass the opacity test.

49. The justificatory link between Kantian respect and the natural right to equal freedom has been elaborated on in, for example, Allen Wood, *Kant's Ethical Thought* (Cambridge: Cambridge University Press, 1999), 323; Paul Guyer, *Kant on Freedom, Law, and Happiness* (Cambridge: Cambridge University Press, 2000), chap. 7; Hillel Steiner, *An Essay on Rights* (Oxford: Blackwell, 1994), chap. 6 (c).

Consider, however, the practice of directly equalizing autonomy.⁵⁰ Whatever the particular conception of autonomy one adopts, it seems inevitable that autonomy will qualify as one of the scalar properties on which the range property of moral personality supervenes, or will at least be partly constituted by one or more of such scalar properties. Assuming this to be so, the direct equalization of autonomy (or reduction of inequality of autonomy) fails the opacity test: one cannot justifiably pursue equality of autonomy (or lesser inequality of autonomy) by first ascertaining that Smith's level of autonomy, though above the minimum threshold, is lower than that of Jones, and then aiming to raise Smith's level of autonomy.⁵¹ To prescribe this practice would be to deny that we have a commitment to the opacity of Smith and Jones in terms of their levels of autonomy and would therefore be to deny that equality of autonomy has a basis.

Similarly problematic is the direct pursuit of equality of "overall endowments," where the latter are taken to consist in the combination of a person's "internal endowments" (that is, her talents and skills) and her "external endowments" (that is, her external resources, or the welfare or well-being that she derives from them, actually or potentially).⁵² Hardly any egalitarians have prescribed the direct equalization of internal endowments (such an equalization is usually seen as impossible or strongly counterintuitive), but many have prescribed the direct equalization of overall endowments. The basic idea is that one should equalize external endowments, after which one should assess inequalities among individuals in terms of their internal endowments and then redistribute external endowments in such a way as to equalize overall endowment levels, taking from those with greater-than-average internal endowments and giving to those with less-than-average internal endowments. This topping-up exercise fails

50. Marc Fleurbaey calls his egalitarian ideal "equality of autonomy," and says that "the word 'autonomy' is chosen here instead of 'freedom' or 'opportunity,' [partly] because . . . autonomy is, more transparently, something that depends not only on the quality of the menu [of options available to the agent] but also on *the quality of the agent*"; Marc Fleurbaey, *Fairness, Responsibility, and Welfare* (Oxford: Oxford University Press, 2008), 272, my emphasis.

51. How might Smith's level of autonomy be raised? One possibility is through paternalist intervention—for example, providing Smith with special guidance or educational resources, or attaching disincentives to certain courses of action that Smith, but not Jones, has an ill-informed or weak-willed tendency to pursue, with a view to increasing Smith's consciousness of their disvalue.

52. Here I am using the word 'internal' as it is used in the literature on the currency of egalitarian justice. The properties that count as 'internal' in this last sense include, but tend not to be limited to, those that count as 'internal' in the sense specified in Sec. IV above, and which I here call "agential endowments" (see the final two sentences of the same paragraph in the main text).

the opacity test, for “internal endowments,” as they are normally understood in the literature on equality, are assumed to include the capacities on which moral personality supervenes. Call this subset of a person’s internal endowments her *agential* endowments.

There may, however, be indirect ways of pursuing equality (or lesser inequality) of autonomy or of overall endowments that do pass the opacity test. Suppose it were to be shown that the universal and unconditional provision of certain external goods, such as a basic income or public education or public health insurance, would lessen inequality of overall endowments.⁵³ Such policies would take inferior agential endowments into account only in an impersonal way and so would not necessarily violate the requirement of opacity respect. The idea that a reduction in inequality of overall endowments will result from the unconditional provision of certain external goods presupposes only a general empirical correlation between agential endowments and earning power, not the claim that Jones has greater agential endowments than Smith. One can assume such general truths while continuing to show opacity respect to each and every individual person. Thus, the indirectness of an egalitarian practice (in this case, the fact of focusing on external goods), combined with unconditionality of allocation, can qualify that practice as respectful in the required sense.

VII. EQUALITY, CAPABILITY, AND RESPONSIBILITY

Elizabeth Anderson and Jonathan Wolff have rightly suggested that there is something disrespectful about the idea of singling out those with inferior agential endowments and offering them cash compensation.⁵⁴ Such a policy “disparages the internally disadvantaged and raises private disdain to the status of officially recognized truth.”⁵⁵ Assuming the correctness of my account of the basis of equality, we can now strengthen this substantive moral objection by reformulating it as a charge of conceptual incoherence. We can say that such a practice fails to be coherently egalitarian, for it violates the require-

53. The move from what Rawls would call an “unjust” distribution to one that he would call “just throughout” (Rawls, *A Theory of Justice*, 68; achieved, in the present case, through the universal unconditional allocation of certain external goods) would involve a reduction in inequality of external endowments and therefore (assuming internal endowments to be constant) also in inequality of overall endowments. The move to what Rawls calls a “perfectly just” distribution (*ibid.*), on the other hand, can involve an increase in inequality of overall endowments.

54. Anderson, “What Is the Point of Equality?” 302–7; Jonathan Wolff, “Fairness, Respect, and the Egalitarian Ethos,” *Philosophy and Public Affairs* 27 (1998): 97–122, at 113–15.

55. Anderson, “What Is the Point of Equality?” 305.

ment of opacity respect, and in so doing it denies the very basis of equality.

For Anderson and Wolff, the worst disrespecters of persons are luck egalitarians. I shall turn to the case of luck egalitarianism shortly. First, however, we should note that, whatever their own views on how best to interpret the notion of respect, the alternative egalitarian theory embraced by both Anderson and Wolff—the capability approach of Amartya Sen and Martha Nussbaum—itself often fails the opacity test when considered as an egalitarian practice.⁵⁶

According to Anderson, “egalitarians should seek equality for all in the space of capabilities.”⁵⁷ These capabilities include basic ones such as “knowledge of one’s circumstances and options, the ability to deliberate about means and ends, the psychological conditions of autonomy, including the self-confidence to think and judge for oneself.”⁵⁸ How should this equality be pursued? Anderson echoes Sen in claiming that, because of “differences in their internal capacities and social situations, people are not equally able to convert resources into capabilities for functioning. They are therefore entitled to different amounts of [external] resources so they can enjoy freedom as equals.”⁵⁹ Pursuing equality of capabilities in this way need not involve offering cash compensation for inferior agential capacities. Nevertheless, it does involve identifying those with inferior agential capacities and aiming to remove or limit the inequality of basic capabilities arising from such an inferiority. To the extent that it does so, it fails the opacity test.

The capability approach might well be thought to justify the kinds of indirect egalitarian practices mentioned above: a commitment to guaranteeing certain basic capabilities might be thought to provide the ultimate justification for government policies allocating certain universal and unconditional external benefits. So interpreted,

56. Sen, *Inequality Reexamined*, and Amartya Sen, *Freedom as Development* (Oxford: Oxford University Press, 1999); Martha C. Nussbaum, *Women and Human Development* (Cambridge: Cambridge University Press, 2000), and *Frontiers of Justice*; Anderson, “What Is the Point of Equality?” 316–21; Jonathan Wolff and Avner de-Shalit, *Disadvantage* (Oxford: Oxford University Press, 2007).

57. Anderson, “What Is the Point of Equality?” 316.

58. *Ibid.*, 317–18. These basic capabilities reflect some of the items on Nussbaum’s list: being able to “imagine, think and reason,” being able to “form a conception of the good and to engage in critical reflection about planning one’s life” (Nussbaum, *Women and Human Development*, 78–79).

59. Anderson, “What Is the Point of Equality?” 320.

the capability approach passes the opacity test.⁶⁰ Nevertheless, most capability theorists—including, as we have just seen, Anderson herself—do not appear to limit themselves to the prescription of certain universal and unconditional benefits. They appear to be keen for public action to focus, among other things, on disadvantages of particular individuals in terms of agential capacities.⁶¹ Where such agential capacities are particularly low among certain individuals or social groups, most capability theorists would presumably single out those individuals or social groups as deserving of special measures (redistributing external resources or acting on local environmental factors) that will redress the perceived imbalance. It is understandable, on the face of it, for a progressive theorist to wish to focus on existing differences among particular individuals or groups in terms of such agential endowments. And yet, if my arguments so far are correct, such a focus cannot be considered justifiably egalitarian.

This characterization of the capability approach as incompatible with the basis of equality may serve to bolster Rawls's reply to Sen's critique of his index of primary social goods. In that reply, Rawls states that, according to his theory, "the differences in citizens' moral powers do not, as such, lead to corresponding differences in the allocation of primary goods." "No differences in basic capabilities (within the normal range [i.e., above the minimum threshold]) affect persons' equal basic rights and liberties."⁶² While this position is clear enough, capability theorists complain that Rawls has not really provided a solid reason for ignoring facts about the differential capabilities of particular individuals or groups, other than the practical dif-

60. Notice, however, that the grounds for providing the unconditional benefits (as part of an egalitarian practice) cannot be that particular persons have been identified as disadvantaged in terms of their agential endowments. The latter grounds appear to be assumed by Wolff and de-Shalit, despite their claim that universal unconditional benefits provide a way of "addressing disadvantage while respecting people" (this is the title of chap. 10 of their book *Disadvantage*). It seems to me that Wolff and de-Shalit are more interested in avoiding humiliating people than in respecting them. Respect (in the present context) is an attitude on the part of the policy maker; humiliation is an effect of certain policies (for example, any policy that involves publicly announcing or highlighting certain people's inferiorities). If we identify the disadvantaged by placing people "in an ordering with respect to . . . functioning" (108), where people's functioning depends in part on various agential capacities (including the capacity for "sense, imagination and thought," and for "practical reason" or "autonomy"), we are likely to violate the requirement of opacity respect.

61. In Anderson's case, this point is supported not only by her endorsement of the direct equalization of individuals' overall capability levels (quoted above) but also by her explicit rejection of unconditional benefits in favor of benefits that are conditional on an inability to work ("What Is the Point of Equality?" 318, 321). See also the previous note.

62. John Rawls, *Justice as Fairness: A Restatement* (Cambridge, MA: Harvard University Press, 2001), 171.

ficulty of taking such detailed information into account at the constitutional or legislative stages. An important additional reason, I suggest, can be found in the notion of opacity respect. Rawls himself states that the basic structure, in its realization of his second principle of justice, “provides the background institutions of social and economic justice in the form most appropriate to citizens seen as free and equal.”⁶³ On my proposed account of the basis of equality, citizens are seen as equal only because they are treated with opacity respect. Therefore, taking account of information about the differential basic capabilities of particular individuals or groups is not only practically difficult but is also inconsistent with treating citizens as (free and) equal.

Let us now turn to the case of luck egalitarianism, again considered as an egalitarian practice.⁶⁴ According to luck egalitarianism, each individual should be guaranteed an equal start in terms of her overall level of opportunity for resources or for welfare or for well-being, taking into account both her initial internal endowments (including her agential endowments) and her initial external endowments. Subsequent to this equal start, she may enjoy the benefits of any positive outcomes for which she can be held responsible and will receive compensation only for those disadvantages for which she cannot be held responsible. Individuals enjoy ‘equal opportunity for x ’ if any actual inequalities of x are traceable to choices they have made subsequent to a situation of equal starts.

Two features of luck egalitarianism need to be considered here: first, its sensitivity to questions of responsibility; second, its concern with inequalities in agential endowments. Concerning the first feature, it might be thought that opacity respect rules out sensitivity to questions of responsibility, given that judgments of responsibility presuppose knowledge about the degrees of autonomy with which particular individuals choose and act.⁶⁵ It is true that luck egalitarian policies generally assume such knowledge. However, the requirement of opacity respect does not rule out responsibility-sensitive egalitarianism as such. It does not rule out judgments that generalize about responsibility with reference only to the capacities of the normal agent and to the external conditions of choice. Consistently with opacity respect, one may stipulate that the normal agent can be held responsible for a given choice in given external conditions, where by

63. Rawls, *Justice as Fairness*, 48.

64. The luck egalitarian writings I have in mind include Arneson, “Equality and Equal Opportunity for Welfare”; Cohen, “On the Currency of Egalitarian Justice”; Roemer, *Egalitarian Perspectives*.

65. See Anderson, “What Is the Point of Equality?” 310.

“normal agent” is meant any agent in possession of at least the minimal capacities that fix the lower limit of the Rawlsian range property of moral personality. As a result of such a stipulation, all moral persons will be treated as equally responsible in identical external circumstances. Responsibility-sensitive judgments about distributive justice will therefore tend to be harsher on some particular individuals, and/or softer on others, than the judgments normally envisaged by luck egalitarians.⁶⁶ Exactly how far, and in what ways, luck egalitarians would need to revise their relevant conception of responsibility in order to prescribe such an egalitarian practice, and just how far such a revision could qualify as plausible in itself, are potentially complex issues that must be set aside for now.

More straightforwardly, and assuming the possibility of salvaging responsibility-sensitive egalitarianism in some form, the two features of luck egalitarianism seem to conflict. As a result of this conflict, the luck egalitarian appears to face a dilemma: that of *either* abandoning her sensitivity to questions of responsibility *or* abandoning her concern with differences in agential endowments.

Consider first the luck egalitarian’s attention to differences in agential endowments. Like most versions of the capability approach (but restricting its attention to individuals’ starts in life), most versions of luck egalitarianism cannot be put into practice directly without violating the requirement of opacity respect, for the equal starts favored by most luck egalitarians are determined by individuals’ combinations of external and internal endowments, where the latter include agential endowments. While the responsibility-sensitive aspect of luck egalitarianism may be consistent with opacity respect, then, it seems that, as far as direct egalitarian practices are concerned, responsibility-sensitive egalitarians ought to revise their assessments of inequalities so as to include only nonagential endowments.

Now we have seen that it is possible for an opacity-respectful egalitarian practice to compensate *indirectly* for differences in agential endowments. Such an indirect focus on agential endowments is exemplified by the policy of an unconditional basic income. It is also exemplified by economic policies motivated by Rawls’s difference principle. Indeed, the idea of an unconditional basic income fixed at the highest sustainable level has been defended as one way to realize the Rawlsian prescription of maximin (or leximin) social primary

66. How much harsher and/or softer they will be, and on which individuals, will depend on how one fixes the levels of compensation due to individuals who are held “responsible” or “not responsible” for their bad luck.

goods.⁶⁷ Rather than taking inferior agential endowments directly into account, such policies distribute external endowments in favor of those who have least. Given that those with the least external endowments will tend, as an empirical rule, to be those with the lowest earning power, external resources will as a result tend to be distributed to the advantage of those with lesser agential endowments. (Admittedly, Rawls's difference principle is not, strictly speaking, a principle of equality of anything.⁶⁸ I shall return to this point presently.)

However, this Rawlsian policy necessarily lacks the sensitivity to questions of responsibility insisted on by luck egalitarians, for it achieves its aim by means of the *unconditional* maximization of the external endowments of those who have least, hence the dilemma faced by any erstwhile luck egalitarian who is exercised by the need to supply a basis for equality. On the one hand, she can maintain the responsibility-sensitive aspect of her theory, but at the cost of ignoring agential endowments altogether. If the erstwhile luck egalitarian embraces this alternative, she will favor equal starts in terms of nonagential endowments only and will accept as just all subsequent differences in nonagential endowments for which normal agents can be held responsible, including all subsequent inequalities brought about by differences in earning power that can be traced to differences in agential capacities. This alternative is likely to strike most luck egalitarians as unacceptably anti-egalitarian. On the other hand, the erstwhile luck egalitarian can take indirect account of differences in agential endowments by favoring the Rawlsian difference principle or an unconditional basic income granted over the course of people's lives. To the extent that she embraces this alternative, however, she will effectively have abandoned the responsibility-sensitive aspect of her theory. If we assume the requirement of opacity respect, then, there is a tension between the "luck" element and the "egalitarian" element of luck egalitarianism.

As a last-ditch attempt to salvage the egalitarian credentials of opacity-violating redistributive practices, it might be suggested that we can adopt the two-stage process of justification characteristic of Rawlsian contractualism. For Rawls, those with inferior agential endowments receive help not because public policy is geared to the pursuit of an equality (or lesser inequality) of overall bundles of resources or

67. See Philippe Van Parijs, *Real Freedom for All* (Oxford: Oxford University Press, 1995), 94–95, and, on the implications for respect for the less talented, Wolff, "Fairness, Respect and the Egalitarian Ethos," 121–22. Van Parijs also claims that basic income avoids "stigmatizing" the less well endowed.

68. I am here interpreting the difference principle as prescribing what Rawls calls a "perfectly just" distribution, and therefore as permitting increases in inequality of overall endowments. See n. 53 above.

welfare or well-being, but because of the equal moral standing they enjoy as parties to the social contract. As I noted earlier, the difference principle does not itself prescribe equality of anything.⁶⁹ Nevertheless, it is justified by reference to the moral equality of the parties to the contract. It might be suggested, then, that the basis of equality is needed only in the first stage of our argument—to ground people's equal standing in the social contract—and that, in the second stage of our argument, the contractual agreement can then in principle justify *any* practice (whether egalitarian or prioritarian or sufficientarian), regardless of whether or not it violates opacity respect.

Can the capability theorist or the luck egalitarian help herself to this idea of a two-stage process of justification, affirming a first stage in which, in virtue of our opacity respect for persons, the parties enter the social contract with equal moral standing, and then a second stage in which those same parties agree, in a hypothetical choice situation, to prescribe a practice (whether egalitarian or nonegalitarian) that violates opacity respect? Such a proposal is at most only superficially plausible. The justification of the difference principle depends, within the contractualist model, on equality of a fundamental good—namely, the moral standing assumed at the first stage. On my interpretation, that equality of moral standing is in turn justified by the appropriateness of opacity respect, given that opacity respect motivates us in ascribing to individuals the range property of moral personality. Opacity respect, together with the range property that it motivates, therefore serves to justify the Rawlsian difference principle. And the same justificatory structure must hold in the case of any prescription that is said to have a contractualist justification, be it the prescription of equality of x or the prescription of inequality of x . In other words, the prescriptions emerging from the original position cannot have just any content but must themselves be consistent with the equality of the parties to the contract. Otherwise, the social contract will not itself serve to justify those emergent prescriptions. If there is to be a justificatory link between the initial equality of the first stage and the prescriptions emerging at the second stage, it must be possible to make those prescriptions without thereby implicitly denying our reasons for affirming the initial equality. It is no coincidence, I submit, that the redistributive practices that most obviously follow from Rawls's difference principle are all compatible with the requirement of opacity respect.

The foregoing reflections suggest that the outcome of our search for the basis of equality can work as a surprisingly powerful filter, leading us to question the plausibility of a number of answers to the

69. See also n. 29 above.

question “Equality of what?” I have suggested that the basis of equality is moral personality considered as a Rawlsian range property that is relevant in virtue of the appropriateness of treating persons with opacity respect. If this suggestion is correct, the only justifiable egalitarian practices are those that can be realized without violating the requirement of opacity respect.